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In the Supreme Court
OF THE
United States

October Term, 1933.

No.....

INGER JULIANE HANSEN,
Petitioner,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The petition of Inger Juliane Hansen respectfully shows:

QUESTIONS PRESENTED.

On November 14, 1931, the petitioner was ordered deported to Denmark by the Secretary of Labor, on

the ground that she is an alien, who, at the time of her return on September 6, 1931, from a temporary sojourn in Europe, entered the United States for an immoral purpose. Having been taken into custody for the purpose of deportation, a petition for a writ of habeas corpus was presented to the United States District Court for the Northern District of California, Southern Division to test the validity of the order of deportation and the detention under it. The petition was denied and the Circuit Court of Appeals for the Ninth Circuit affirmed the order and judgment of the District Court. *Hansen v. Haff*, 65 Fed. (2d) 94.

The questions involved are:

(1) Whether or not an alien resident of the United States, returning to the United States from a temporary sojourn abroad and having, at the time of her return, the intention to indulge in occasional sexual relations, but having no intention to live in the state of concubinage or to practise prostitution, enters for an "immoral purpose", within the meaning of Section 3 of the Immigration Act of February 5, 1917, providing as follows:

> "That the following classes of aliens shall be excluded from admission into the United States: * * * prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; * * *."
>
> (8 U. S. C. A., Sec. 136.)

(2) Whether or not an alien resident of the United States upon her return to the United States from

a temporary sojourn abroad, enters for an "immoral purpose", within the meaning of Section 3 of the Immigration Act of February 5, 1917, supra, where the facts establish that her return is dominated by a purpose to resume her residence in the United States to pursue therein a legitimate occupation, although she entertained the incidental intention to indulge in occasional illicit sexual relations.

SUMMARY STATEMENT OF THE FACTS OF THE CASE.

The petitioner, a native and citizen of Denmark, a cook and housemaid by occupation, was first admitted to the United States on September 19, 1922. She has resided and remained continuously ever since her admission in the United States, save for the following trips to Europe: departed in 1926 and returned in May, 1928; departed in May, 1931, and returned on September 6, 1931. In 1924, at Los Angeles, California, she became acquainted with a married man and in 1925 began to have illicit sexual relations with him; these relations continued, but she was employed and did not cohabit or live with him; in May, 1931, when she departed from Los Angeles on her second trip to Europe, she was accompanied by this man and that they maintained illicit sexual relations part of the time, but not all of the time, while in Europe; that upon her return to the United States, she was accompanied by this man and, upon arrival at Seattle,

Washington, where they entered the United States on September 6, 1931, they went to a hotel and registered as man and wife for one night.

The foregoing statement of facts is taken from the findings and decision of the Secretary of Labor and it is upon these facts that the decision of the Secretary of Labor ordering the deportation of the petitioner is predicated. A copy of the findings and decision of the Secretary of Labor was filed as an exhibit to the petition for a writ of habeas corpus. (Tr. of R. p. 11 et seq.)

REASON RELIED ON FOR THE GRANTING OF THE PETITION—CONFLICT OF DECISIONS.

Diversity of judicial opinion is relied upon for the granting of the petition.

Upon the questions presented, the Circuit Court of Appeals for the Ninth Circuit, in deciding the case at bar, was, itself, divided. His Honor Judge Sawtelle, writing the majority opinion, in which His Honor Judge Wilbur concurred, held, under the facts stated, as follows:

1. That indulgence in occasional illicit sexual relations is contrary to good morals and that, therefore, the petitioner, who had the intention, at the time of entry, to indulge in such relations, entered for an immoral purpose within the meaning of

Section 3 of the Immigration Act of February 5, 1917, supra.

2. That it was immaterial whether or not the petitioner entered to live in a state of concubinage, as long as she intended to indulge in occasional illicit sexual relations.

3. That it was immaterial whether or not the petitioner at the time of her entry was returning to an established residence in the United States.

His Honor Judge Mack, in a strong dissenting opinion, held as follows:

1. That entry for an immoral purpose, under Section 3 of the Immigration Act of February 5, 1917, supra, contemplates an entry for the purpose of engaging in immoral practices of the same general class, *ejusdem generis,* as prostitution.

2. That indulgence in occasional illicit sexual relations is not an immoral practice *ejusdem generis* with prostitution and that, therefore, the petitioner did not enter for an immoral purpose.

3. That petitioner's entry into the United States was dominated by the purpose to return to her established residence in the United States to pursue therein her occupation as a cook and housemaid and that, therefore, she did not enter for an immoral purpose, although she may have had the incidental purpose to indulge in occasional illicit sexual relations.

The majority opinion is in direct conflict with the decision of the District Court for the Southern District of Texas in the case of

Ex parte Rocha, 30 Fed. (2d) 823,

in which His Honor Judge Hutcheson held that, as long as an alien's entry was *dominated* by a purpose to return to an established residence and business in the United States, an incidental or secondary purpose to have illicit sexual relations cannot be found to be the cause or purpose of his entry.

As pointed out by His Honor Judge Mack, in his dissenting opinion in the case at bar, the case of *Ex parte Rocha,* supra, is the only one cited or found in which the question was directly involved.

In principle, the majority opinion, in failing to apply the rule of *ejusdem generis* is, also, in conflict with the decision of

United States v. Bitty, 208 U. S. 393, 28 Sup. Ct. 396, 52 L. Ed. 543,

which involved a criminal prosecution under the immigration laws for bringing an alien to the United States "for the purpose of prostitution or for any other immoral purpose." There, the rule of *ejusdem generis* was conceded to be applicable and the phrase "any other immoral purpose" was construed,

> "in accordance with the familiar rule of ejusdem generis, the immoral purpose referred to by the words 'any other immoral purpose,' must be one of the same general class or kind as the particular purpose of 'prostitution' specified in the same clause of the statute."

The majority opinion, also, runs counter to a line of decisions, which involve the construction of the words "immoral purpose", as found in the Mann or White Slave Act (18 U. S. C. A. Sec. 398). These decisions hold that the words "immoral purpose" import that a transportation in interstate commerce must be *dominated* and *controlled* by an immoral purpose and that where an interstate journey was taken definitely for another purpose and would have been taken in any event, the fact that illicit intercourse took place in the course of the journey, as an incidental occurrence, did not bring the case within the meaning and intent of the statute:

Welsch v. United States, 220 Fed. 764, C. C. A. 4th;

Fisher v. United States, 266 Fed. 667, C. C. A. 4th;

Hunter v. United States, 45 Fed. (2d) 55, C. C. A. 4th;

Alpert v. United States, 12 Fed. (2d) 352, C. C. A. 2nd;

Sloan v. United States, 287 Fed. 91, C. C. A. 8th.

The Mann or White Slave Act and the Immigration Act were read in *pari materia* in the case of

Caminetti v. United States, 242 U. S. 470, 37 Sup. Ct. 61 L. Ed. 442,

to the extent that t' is Honorable Court, in construing the words "immoral purpose", as found in the Mann

or White Slave Act, depended upon the construction, which had been placed upon those words in the case of *United States v. Bitty,* supra.

A statement of the case and an argument in support of this petition are contained in the brief annexed hereto.

Wherefore petitioner respectfully prays that this Court will issue a writ of certiorari to the Circuit Court of Appeals for the Nitnh Circuit, in order that the judgment of that Court in this case may be reviewed and corrected.

ROGER O'DONNELL,
STEPHEN M. WHITE,
Counsel for Petitioner.

Dated: San Francisco, California,
August 4th, 1933.

CERTIFICATE OF COUNSEL.

The undersigned counsel for petitioner certify that the above and foregoing petition is not interposed for delay, and that, in their opinion, said petition is well founded.

ROGER O'DONNELL,
STEPHEN M. WHITE,
Counsel for Petitioner.

Dated: San Francisco, California,
August 4th, 1933.

In the Supreme Court
OF THE
United States

October Term, 1933.

No.....

INGER JULIANE HANSEN,
Petitioner,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,
Respondent.

NOTICE OF PRESENTATION OF PETITION FOR WRIT OF CERTIORARI.

To Honorable Homer S. Cummings, Attorney General of the United States, Washington, D. C.:

Sir:

You will please take notice that the petitioner above named, through her counsel, will present, to the above named court on the 8th day of August, 1933, at the hour of twelve o'clock noon of said day, or as soon thereafter as his counsel can be heard, at the court-room thereof in the Capitol Building, in the City of Washington, District of Columbia, her petition for a writ of certiorari.

Said petition will be based upon this notice, the accompanying petition for a writ of certiorari and all of the papers and records on file.

Yours, etc.
ROGER O'DONNELL,
STEPHEN M. WHITE,
Attorneys for Petitioner.

Dated: San Francisco, California,
August 4, 1933.

ADMISSION OF SERVICE.

Receipt of a copy of the foregoing petition for writ of certiorari and notice of presentation of petition for writ of certiorari is hereby admitted this 8th day of August, 1933.

.....

Attorney General of the United States.

.....

Assistant Attorney General of the United States.
Attorneys for Respondent.

In the Supreme Court
OF THE
United States

October Term, 1933.

No.....

INGER JULIANE HANSEN,
Petitioner,

vs.

EDWARD L. HAFF, Acting Commissioner of Immigration for the Port of San Francisco,
Respondent.

BRIEF IN SUPPORT OF PETITION.

STATEMENT DISCLOSING BASIS OF JURISDICTION.

(a) The statutory provision sustaining the jurisdiction of this Court to allow the writ of certiorari is contained in Section 238 of the Judicial Code, as amended February 13, 1925 (43 Stat. L. 936, 938, 28 U. S. C. A. 345).

(b) A petition for a writ of habeas corpus was filed in the District Court for the Northern District of California on December 30, 1931 (Transcript of Record pp. 1-9.)

(c) The judgment of the District Court denying the petition for a writ of habeas corpus was filed and entered on May 6, 1932 (Transcript of Record, p. 20).

(d) The opinion of the Circuit Court of Appeals for the Ninth Circuit was rendered and filed on May 8th, 1933 (Transcript of Record, p. 37). The opinion is reported in 65 Fed. (2d) 94.

(e) The judgment of the Circuit Court of Appeals was made, entered and filed on May 8th, 1933 (Transcript of Record, p. 45).

(f) No petition for re-hearing by Circuit Court of Appeals was filed.

(g) The judgment of the Circuit Court of Appeals in habeas corpus proceedings is a final judgment.

Lau Ow Bew v. United States, 144 U. S. 47, 12 Sup. Ct. 517, 36 L. Ed. 340, at page 344.

STATEMENT OF THE CASE.

The proceeding is in habeas corpus and was commenced for the purpose of obtaining the discharge of the petitioner from the custody of the respondent, who, upon orders of the Secretary of Labor, was holding her for deportation to Denmark.

On September 9, 1931, the Secretary of Labor issued his warrant for the petitioner's arrest on the charge that she is in the United States in violation of the

Immigration Act of February 5, 1917, in that she entered the United States on September 6, 1931, for an immoral purpose. On November 14, 1931, the Secretary of Labor issued his warrant for the petitioner's deportation to Denmark on the charge stated.

The original immigration records, which disclose the proceedings resulting in the issuance by the Secretary of Labor of the order of deportation, were filed by respondent, as exhibits, at the hearing of the petition for a writ of habeas corpus in the District Court. Upon appeal, these records, by order of Court (Tr. of R. p. 27) were transmitted to the Circuit Court, as part of the record on appeal, and are now before this Honorable Court.

The essential facts, in respect to which there is no dispute, are:

1. On September 19, 1922, the petitioner first came to the United States; she has ever since resided in the United States.
2. In 1924, she became acquainted at Los Angeles, where she resided and where she was employed as a domestic, with a married man and thereafter began to have illicit sexual relations with him; she did not live with him and was not supported by him, but she lived where she was employed and supported herself from her own earnings, which ran as high as $115.00 per month.
3. In May, 1931, she made a trip to Europe to visit her parents in Denmark; prior to her departure on this trip, she had arranged with an

employment agency to secure employment for her as a domestic upon her return.

4. On September 6, 1931, she returned to the United States, through the Port of Seattle, Washington, and was admitted by the immigration authorities at that port as a returning resident.

5. On her trip to Europe, she was accompanied by the man, whom she had previously met at Los Angeles; this man went to Europe to attend a convention in Vienna; while in Europe, he visited the petitioner at the home of her parents, but did not have illicit relations with her there; part of the time, he travelled with the petitioner in Europe and had illicit relations with her.

6. Following their return to the United States on September 6, 1931, the petitioner and her companion went to a hotel at Seattle and registered for one night as man and wife.

7. When the petitioner entered the United States on September 6, 1931, she intended to have illicit relations with her companion until she reached her home in Los Angeles; upon reaching Los Angeles, she intended to resume her employment as a domestic.

The foregoing facts are established by the evidence adduced by the immigration authorities at the hearing under the warrant of arrest. (Original Immigration Record, No. 57762/874.) The Secretary of Labor, in his findings and decision, admits the facts (Tr. of

R. pp. 11-18) and the same have been adopted, in the main, in the opinions, majority and minority, of the Circuit Court.

ARGUMENT.

THE APPLICABLE STATUTES.

Section 3 of the Immigration Act of February 5, 1917, provides, as follows:

> "That the following classes of aliens shall be excluded from admission to the United States; * * * prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose; * * *."
>
> (8 U. S. C. A. Sec. 136.)

Section 19 of the same Act provides, as follows:

> "At any time within five years after entry any alien who at the time of entry was a member of one or more of the classes excluded by law * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported; * * *."
>
> (8 U. S. C. A. Sec. 155)

JURISDICTION OF THE COURTS TO INTERFERE WITH THE DECISION OF THE IMMIGRATION AUTHORITIES.

If the immigration authorities draw an erroneous conclusion of law from established facts, the Courts

are empowered to release the alien in habeas corpus proceedings.

Gegiow v. Uhl, 239 U. S. 3, 36 Sup. Ct. 2, 60 L. Ed. 114.

Moreover, the decision of the immigration authorities must find adequate support in the evidence.

Zakonaite v. Wolf, 226 U. S. 272, 33 Sup. Ct. 31, 57 L. Ed. 218;

Interstate Commerce Commission v. Louisville & N. R. Co., 227 U. S. 88, 33 Sup. Ct. 185, 57 L. Ed. 431, at page 433.

BURDEN OF PROOF.

In deportation proceedings, as distinguished from exclusion proceedings, the burden is upon the immigration authorities to show that the alien has done some act to forfeit his right of residence in the United States.

Bilokumsky v. Tod, 68 L. Ed. 221, 223, 263 U. S. 149, 155.

THE PETITIONER WAS NOT A CONCUBINE.

The majority opinion does not hold that the petitioner was a concubine or that she entered the United States to live in a state of concubinage. It merely holds that the matter is immaterial, as long as the petitioner had the purpose to indulge in occasional illicit sexual relations. However, the Secretary of

Labor predicates his decision entirely upon the theory that the petitioner was a concubine (Tr. of R. pp. 16-18). From the established facts, his conclusion was clearly erroneous.

The sexual relations, in which the petitioner indulged, were sporadic and clandestine. She did not live or cohabit with her companion and he did not maintain or support her. She was regularly employed as a domestic, she lived where she was employed and she supported herself with her own earnings.

Unlawful cohabitation is essential to create a state of concubinage.

Webster's Dictionary;
Suslak v. U. S., 213 Fed. 913 (C. C. A. 9th), at pages 917 and 918;
Trilby v. State, 189 Ind. 205, 126 N. E. 481, 482;
Lee v. City of Oxford, 134 Miss. 647, 99 So. 509;
12 *Corpus Juris* 392.

UNLESS THE PETITIONER'S ENTRY WAS DOMINATED AND CONTROLLED BY AN IMMORAL PURPOSE, SHE WAS NOT WITHIN THE CONDEMNATION OF THE STATUTE.

To sustain an order of deportation on the ground that the petitioner entered the United States for an immoral purpose, the immigration authorities were required to prove that her entry was dominated and controlled by that particular purpose.

The New Standard Dictionary defines "purpose" as "the idea or ideal kept before the mind as an end

of effort or action; the particular thing that any object or course of action is intended to effect or attempt."

Where illicit sexual relations are not the object or basic purpose of entry, but are merely incidental, there is no "immoral purpose." Such has been held to be true of the statute under consideration.

In *Ex parte Rocha,* 30 Fed. (2d) 823 (D. C.), the Court said:

> "* * * the dominant and real facts in the case, * * * are not that he came into the United States for an immoral purpose, but that having gone across the river for an hour's visit, he returned to his home and his business for the purpose of pursuing the ordinary tenor of his life, and whether he did or did not have improper relations with the woman on his return is wholly immaterial, and cannot be found to be the cause or purpose of his return."

It has been uniformly held under the White Slave Act, regarding transportation of women for an "immoral purpose" that the unlawful intercourse subsequently engaged in must have been the end and object to be achieved, and if the transportation was only incidental to other purposes there has been no violation of the law.

Fisher v. U. S., 266 Fed. 667 (C. C. A. 4th);
Hunter v. U. S., 45 Fed. (2d) 55;
Alpert v. U. S., 12 Fed. (2d) 352;
Sloan v. U. S., 287 Fed. 91 (C. C. A. 8th);
Welsch v. United States, 220 Fed. 764 (C. C. A. 4th).

There are numerous other authorities holding in this same vein. The case of *Fisher v. U. S.*, supra, is typical. In that case the defendant had illicit relations with a girl domiciled in one state, took her across the state line for a visit and they subsequently returned and continued their illicit relations. The court held there had been no transportation for an "immoral purpose" within the contemplation of the statute.

Whether the proceedings arise under the Mann or White Slave Act or under the immigration laws, the words "immoral purpose" have the same meaning.

Caminetti v. U. S., 242 U. S. 470, 37 Sup. Ct. 61 L. Ed. 442;

Ex parte Morel, 292 Fed. 423.

In the case of *U. S. v. Bitty*, 208 U. S. 393, 28 Sup. Ct. 396, 52 L. Ed. 543, this Honorable Court went no further than to say that "the importation of an alien woman brought here *only* that she might live in a state of concubinage" was for an immoral purpose

The facts establish that the petitioner, at the time of her departure from the United States for Europe in May, 1931, was a lawfully domiciled resident of the United States, her residence having been acquired in 1922; during her residence in the United States, she pursued the occupation of a domestic and, prior to her departure on her trip, she had made arrangements with an employment agency to secure employment for her upon her return; upon her return, on September 6, 1931, she was admitted as a returning resident. It cannot, therefore, reasonably be doubted that the petitioner intended and had the purpose to

return to the United States to resume her residence and to pursue her regular occupation therein. The United States was her actual and only place of residence and her means of livelihood was dependent upon her return thereto. These considerations naturally and reasonably impel the conclusion that she would have, in any event and entirely irrespective of any thought or purpose in mind as regards future illicit sexual conduct, returned to the United States to pursue the ordinary and normal tenor of her life. Because it is reasonable to expect that she would have, in any event, returned to the United States to resume her residence and occupation therein, it must follow that there was no perceptible relation of cause and effect between her entry and her alleged illicit conduct or that her entry was induced or caused by a consideration of future illicit conduct.

Ex parte Rocha, supra;
Fisher v. U. S., supra;
Welsch v. U. S., supra;
Hunter v. U. S., supra.

UNLESS THE PETITIONER'S ENTRY WAS FOR AN IMMORAL PURPOSE OF THE SAME GENERAL CLASS AS PROSTITUTION, SHE WAS NOT WITHIN THE STATUTE.

It is a fundamental rule of statutory construction that where general words follow the enumeration of particular classes of persons or things, these words will be construed as applicable only to persons or

things of the same general nature or class as those enumerated.

36 *Cyc.* 1119, 1122;
2 *Lewis's Sutherland, Stat. Constr.*, Sec. 423, and authorities cited.

The statute under consideration places in an excluded class "prostitutes, or persons coming into the United States for the purpose of prostitution or for any other immoral purpose." (8 U. S. C. A., Sec. 136.)

In the case of *United States v. Bitty*, supra, the rule of *ejusdem generis* was conceded and it was held that an alien, who was brought to the United States to live in a state of concubinage, was within the condemnation of the statute making it unlawful to bring an alien to the United States "for the purpose of prostitution or for any other immoral purpose." The Court expressly said:

> "* * *. It may be admitted that, in accordance with the familiar rule of ejusdem generis, the immoral purpose referred to by the words 'any other immoral purpose' must be one of the same general class or kind as the particular purpose of 'prostitution' specified in the same clause of the statute. 2 Lewis's Sutherland, Stat. Constr. Sec. 423, and authorities cited. But that rule cannot avail the accused in this case; for the immoral purpose charged in the indictment is of the same general class or kind as the one that controls in the importation of an alien woman for the purpose strictly of prostitution * * *."

Common understanding does not hold indulgence in occasional clandestine sexual relations comparable to

living in a state of concubinage or to practicing prostitution. As His Honor Judge Mack, said, in his dissenting opinion:

> "That case, however, does not justify a holding that appellant falls within the rule; on the contrary, while the concubine and the mistress are comparable to the prostitute, common understanding draws the line too sharply between those classes and the class which indulges occasionally in extramarital relations, to permit of a construction under the ejusdem generis rule that would exclude the latter class as immoral persons like prostitutes."

CONCLUSION.

It is respectfully submitted that a writ of certiorari should be granted and that this Court should review the decision herein of the Circuit Court of Appeals for the Ninth Circuit.

ROGER O'DONNELL,
STEPHEN M. WHITE,
Counsel for Petitioner.

Dated: San Francisco, California,
August 4, 1933.